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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re

POWERINE OIL COMPANY, a California corporation,

Debtor.

POWERINE OIL COMPANY, a California corporation, and CENCO Refining Company, a Delaware corporation,

Plaintiffs,

v.

CHRISTINE TODD WHITMAN, an individual, in her official capacity as Administrator of the United States Environmental Protection Agency; LAURA YOSHII, an individual, in her official capacity as Acting Regional Administrator of the United States Environmental Protection Agency, Region IX; THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION IX,

Defendants.

Case No. LA 84-07086 BR

Chapter 11 Case

Adv. No.

COMPLAINT FOR:
1. **DECLARATORY RELIEF RE DISCHARGE OF DEBT UNDER 11 U.S.C. SECTIONS 1141 AND 524; AND**
2. **UNJUST ENRICHMENT**

STATUS CONFERENCE

DATE:
TIME: To Be Set
CTRM:

TO THE HONORABLE BARRY RUSSELL, UNITED STATES BANKRUPTCY JUDGE, OFFICE OF THE UNITED STATES TRUSTEE, AND DEFENDANT:

Plaintiffs, Powerine Oil Company, a California corporation (the "Debtor"), and CENCO Refining Company, a Delaware corporation ("CENCO") (collectively, "Plaintiffs"), hereby allege and complain as follows:

STATEMENT OF JURISDICTION AND VENUE

1. The United States Bankruptcy Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. Sections 157 and 1334 and 11 U.S.C. Section 105. The instant adversary proceeding is a core proceeding pursuant to 28 U.S.C. Sections 157(b)(2)(I) and (O).

2. Venue lies properly in this judicial district and this civil proceeding arises under Title 11 of the United States Code as provided in 28 U.S.C. Section 1409.

3. This adversary proceeding is brought in connection with Case No. LA 84-07086 BR, presently pending in the United States Bankruptcy Court for the Central District of California.

PARTIES TO THE ACTION

4. The United States Environmental Protection Agency is the executive agency of the United States of America charged with administration of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601 et seq. ("CERCLA"), otherwise known as the federal Superfund. EPA Region IX is responsible for administering the Superfund program in California. Christine Todd Whitman is the Administrator of the EPA, and Laura Yoshii is the Acting Regional Administrator of EPA Region IX (all Defendants hereafter collectively referred to as "EPA"). EPA has asserted that the Debtor is jointly and severally liable under CERCLA for certain response costs incurred or to be incurred in connection with the release or threatened release of hazardous substances at the Operating Industries, Inc. Superfund Site ("OII"). EPA has also asserted that CENCO is liable to EPA for such response costs by virtue of a contractual agreement between the Debtor and CENCO wherein CENCO agreed to indemnify the Debtor with respect to certain environmental liabilities, including those that are the subject of this complaint.

5. The Debtor is, and at all times herein mentioned has been, a corporation duly

organized and existing under the laws of California. At all times relevant to this cause of action, the Debtor's principal place of business was California. On March 26, 1984 (the "Petition Date"), the Debtor filed a petition for relief under Chapter 11 of 11 U.S.C. Section 101, et seq. (the "Bankruptcy Code"). The Debtor's bankruptcy case is presently pending in the United States Bankruptcy Court, Central District of California, as case no. LA 84-07086 BR (the "Case"). The Debtor asserts that EPA's claim for response costs under CERCLA has been discharged in the Case.

6. CENCO is, and at all times herein mentioned has been, a corporation duly organized and existing under the laws of Delaware, authorized to do business in California. Pursuant to the terms of a written agreement between CENCO and the Debtor, CENCO is contractually obligated to indemnify and defend the Debtor with respect to EPA's claim for response costs under CERCLA. CENCO's liability, if any, is entirely derivative of and dependent upon, the Debtor's liability. CENCO asserts that because the Debtor's liability for response costs at the OII Site was discharged, CENCO cannot now be held liable for such costs. Under the terms of the indemnity, CENCO has available to it any defense to liability that would be available to the Debtor.

STATEMENT OF STANDING

7. Plaintiffs have standing to bring this action pursuant to 11 U.S.C. Section 1141 and Rule 4007 of the Federal Rules of Bankruptcy Procedure.

FACTUAL ALLEGATIONS

The OII Site

8. Prior to the Petition Date, the Debtor arranged for the disposal of certain wastes resulting from its crude oil production and petroleum refining operations in Los Angeles at a landfill located in Monterey Park, California, and known as Operating Industries, Inc. or "OII." The OII Site has been the subject of various investigations conducted by EPA and/or state regulatory agencies since 1979, and was proposed for listing on the National Priorities List in October 1984. The Debtor did not dispose of any wastes at the OII Site after the Petition Date.

9. CENCO never disposed of any wastes at the OII Site and is not itself a "potentially responsible party" ("PRP") at the Site.

10. Based on information and belief, Plaintiffs allege that prior to the Petition Date, or in

any event prior to the date of Confirmation, as set forth in paragraph 13 hereof, EPA had actual and/or constructive knowledge, either through its own investigations or through information it received from state regulatory agencies, that releases or threatened releases of hazardous substances deposited by the Debtor had occurred at the OII Site.

11. Based on information and belief, Plaintiffs allege that EPA began to incur response costs at the OII Site prior to the Petition Date, or in any event prior to the date of Confirmation, including without limitation costs associated with preparation of a Site Investigation, a Preliminary Assessment, and a Draft Work Plan for a Remedial Investigation/Feasibility Study.

The Debtor's Bankruptcy Case

12. On or about May 10, 1984, the Debtor filed its Schedules of Assets and Liabilities ("Schedules"). In the Schedules, the Debtor listed EPA as having three claims: (i) a contingent claim in the amount of $64,926.00 for "Violation re limit in gasoline;" (ii) a contingent claim in an unknown amount for the "Stringfellow Dump Site," a National Priorities List site located in Riverside, California; and (iii) a contingent claim in a disputed, unknown amount for other "Waste disposal cleanup charges." The bar date for filing proofs of claim in the Case was fixed by the Court as March 1, 1985 (the "Bar Date"). EPA, by and through the United States Department of Justice, was given notice of the Bar Date. EPA filed at least two proofs of claim in the Case with respect to the Stringfellow Site, which proofs of claim were subsequently withdrawn for reasons unknown. EPA did not file a proof of claim in the Case with respect to the OII Site, prior to the Bar Date or otherwise even though it knew or should have known that the Debtor was in all likelihood a PRP at the OII Site.

13. At the hearings for confirmation of the Debtor's Third Amended Plan of Reorganization (as modified, the "Plan") held on April 1 and 9, 1985, Michael Green of the United States Department of Justice, Environmental Enforcement Section, appeared on behalf of EPA. On July 10, 1985, the Court entered its Order confirming the Plan ("Confirmation Order"). A true and correct copy of the Confirmation Order is attached hereto as Exhibit "1," and incorporated herein by this reference.

14. Pursuant to the terms of the Confirmation Order and the Plan, all of the Debtor's

pre-petition debts were discharged. Specifically, section IX of the Plan, attached as Exhibit "1" to the Confirmation Order, provides in relevant part that:

> "On Confirmation, the Debtor and its property shall be released and discharged from any and all claims or interests of the holders of claims or the Equity Security Holder, except as otherwise provided in the Plan or Order of Confirmation. Any and all claims or causes of action which are held exclusively by the Debtor's estate under the Bankruptcy Code including, but not limited to, claims to recover preferential transfers, to set aside fraudulent conveyances, and to equitably subordinate claims shall, except as provided in paragraph VII B above and claims under 11 U.S.C. §§ 542 and 543, be forever waived and released by the Debtor and the estate, and such claims may not thereafter be pursued by any other representative of the estate or creditor of the estate."

15. Further, paragraph 2 of the Confirmation Order states as follows with regard to the discharge of debts:

> "The Debtor shall be discharged and is hereby released from any debt that arose before Confirmation and any debt of a kind specified in Sections 502(g), (h) and (i) of the Bankruptcy Code. All creditors whose debts are discharged by this order are enjoined from instituting or continuing action or employing any process or engaging in any act to collect such debts from the Debtor or from property of the Debtor or his estate."

EPA's Claims Against Plaintiffs

16. In 1988, subsequent to confirmation of the Debtor's Plan, EPA advised the Debtor that it was liable for certain response costs related to the OII Site. In response to the Debtor's position that any such claim had been discharged in the Case, EPA asserted that it did not have any OII-related claim subject to discharge since EPA had not incurred any costs at the Site until after the Debtor obtained its discharge. See letter from Lisa Haage, EPA Assistant Regional Counsel, to Matthew F. Stewart, then President of the Debtor, dated April 14, 1988 (the "Haage Letter"), a true and correct copy of which is attached hereto as Exhibit "2," and incorporated herein by this

reference.

17. In 1995, in connection with the "Fifth Partial Consent Decree" for the OII Site ("CD-5"), the Debtor entered into a settlement with EPA for response costs related to the OII Site. The Debtor agreed to participate in the CD-5 settlement after EPA agreed to reduce the Debtor's total outstanding liability for the OII Site, as of the effective date of CD-5, from approximately $13 million to $1.5 million, based on the Debtor's inability to pay. EPA also allowed the Debtor to pay over time, subject to interest payments. The Debtor agreed to this so-called "cash-out" settlement in order to avoid protracted and expensive litigation with EPA as to the Debtor's liability for response costs in the first instance, the Debtor's position being that its liability was discharged in 1985. Thereafter, the Debtor made a number of payments to EPA, with interest, pursuant to the CD-5 settlement, as cash became available through insurance recoveries and other means.

18. Throughout its correspondence with EPA related to alleged CERCLA liability at the OII Site, and in the course of entering into the CD-5 cash-out settlement, the Debtor reserved all of its rights under bankruptcy and other applicable law, including its right to argue that the Debtor's liability at the OII Site, if any, had already been discharged by the Plan and the Confirmation Order.

19. In 1998, pursuant to an asset purchase agreement between the Debtor and CENCO (the "Asset Purchase Agreement"), CENCO purchased from the Debtor an oil refinery located in Santa Fe Springs, California (the "Refinery"). In conjunction with the Asset Purchase Agreement, CENCO entered into an Environmental Indemnity and Reimbursement Agreement with the Debtor wherein CENCO agreed to indemnify the Debtor with respect to, among other things, liabilities arising under CERCLA (the "Indemnity"). As part and parcel of its duty under the Indemnity to indemnify, defend and hold the Debtor harmless, CENCO was and is contractually bound to assert all defenses to liability that could be asserted by the Debtor. The Environmental Indemnity and Reimbursement Agreement expressly provides that it is not intended to confer any right or benefit upon any person other than the Seller (the Debtor) and the Buyer (CENCO), and that no third party shall have any legally enforceable right thereunder.

20. Following CENCO's acquisition of the Refinery in 1998, pursuant to the terms of the Indemnity, CENCO satisfied the Debtor's remaining obligations to EPA in full under the CD-5

cash-out settlement agreement. The total amount paid by Plaintiffs to EPA under CD-5, including interest payments, was $2,044,206.27. In all cases, the payments to EPA – whether by the Debtor or by CENCO, on behalf of the Debtor – were made under a reservation of rights and subject to the Debtor's defense that its CERCLA liability at the OII Site had been discharged in the Case in 1985.

21. EPA is now in the process of seeking recovery of response costs relating to implementation of the Final Remedy at the OII Site pursuant to the Eighth Partial Consent Decree ("CD-8"). As in the past, EPA has offered cash-out settlements to a number of entities identified as PRPs at the Site, including the Debtor. EPA has calculated the Debtor's remaining liability at the OII Site to be $5,022,757, based on its volumetric share of waste sent to the Site, which calculation the Debtor disputes. Plaintiffs are also given the option of paying a total of $6,563,285 under CD-8 in exchange for a greater limitation on EPA's right to recover further response costs from Plaintiffs in the future. EPA has asserted that CENCO is liable for payment of this amount pursuant to the terms of the Indemnity, even though CENCO has no direct liability for the claim and even though the Environmental Indemnity and Reimbursement Agreement expressly excludes third party beneficiaries.

22. The Debtor and CENCO dispute that they are required to make any payment to EPA relating to implementation of the Final Remedy at the OII Site, or any other aspect of the remedial action at OII, on the grounds that any and all CERCLA liability related to the OII Site has been discharged in the Case pursuant to the Plan and the Confirmation Order.

FIRST CLAIM FOR RELIEF

(For Declaratory Relief As Against EPA)

[11 U.S.C. Sections 1141(d)(1)(A) and 524(a)(2)]

23. Plaintiffs hereby refer to, reallege, and incorporate by reference paragraphs 1 through 22, inclusive, above as set forth verbatim herein.

24. An actual controversy exists in that EPA has asserted that the Debtor, and therefore CENCO pursuant to the Indemnity, are liable for response costs related to the OII Site.

25. Based on information and belief, Plaintiffs allege that prior to the Petition Date, or in

any event prior to the date of Confirmation, EPA had actual knowledge of a release or threatened release of hazardous substances at the OII Site, and had otherwise acquired detailed information about the specific types and quantities of wastes sent to the Site and the identity of at least those parties, including the Debtor, who sent the largest volumes of waste to the Site.

26. On that basis, Plaintiffs allege that as of the Petition Date, or in any event as of the date of Confirmation, EPA had "fair contemplation," as such term is defined in In re Jensen, 995 F.2d 925, 930 (9th Cir. 1993), of its claim against the Debtor for all future response costs and all natural resource damages, if any, related to the OII Site.

27. EPA's claim against Plaintiffs for response costs related to the Final Remedy at the OII Site is based exclusively on the Debtor's disposal of wastes at the Site prior to the Petition Date.

28. EPA was given actual notice of the Bar Date.

29. EPA failed to file a proof of claim related to the OII Site prior to the Bar Date.

30. The Confirmation Order discharged all of the Debtor's debts that arose prior to the Confirmation Date.

31. A judicial declaration providing a clear explication as to the respective rights and duties of Plaintiffs to EPA with regard to Plaintiffs' alleged liability under CERCLA related to the OII Site is necessary and appropriate at this time.

32. Plaintiffs specifically request a judicial declaration that EPA's claim against the Plaintiffs for response costs related to the OII Site, incurred or to be incurred by EPA pursuant to CERCLA, has been discharged in the Debtor's Case by operation of the terms of the confirmed Plan, the Confirmation Order, and 11 U.S.C. section 1141(d)(1)(A).

33. Plaintiffs further request a judicial declaration that pursuant to operation of 11 U.S.C. section 524(a)(2), Plaintiffs therefore owe nothing to EPA for such response costs, either directly or pursuant to the Indemnity.

SECOND CLAIM FOR RELIEF

(Unjust Enrichment)

34. Plaintiffs hereby refer to, reallege, and incorporate by reference paragraphs 1 through 33, inclusive, above as set forth verbatim herein.

35. Subsequent to the confirmation of the Plan, the Debtor, and CENCO on behalf of the Debtor, made payments to EPA in connection with the OII Site in the collective amount of $2,044,206.27.

36. In all cases, the payments to EPA – whether by the Debtor or by CENCO, on behalf of the Debtor – were made under a reservation of rights and subject to the Debtor's defense that its CERCLA liability at the OII Site had been discharged in the Case in 1985.

37. EPA's claim against the Plaintiffs for response costs related to the OII Site, incurred or to be incurred by EPA pursuant to CERCLA, has been discharged in the Debtor's Case by operation of the terms of the confirmed Plan, the Confirmation Order, and 11 U.S.C. section 1141(d)(1)(A).

38. As a proximate result of the discharge of the EPA's claim for response costs related to the OII Site, pursuant to 11 U.S.C. section 524(a)(2) Plaintiffs owe nothing to EPA for such response costs, either directly or pursuant to the Indemnity.

39. EPA therefore has been unjustly enriched in an amount of $2,044,206.27, and should be required to disgorge the amount of $2,044,206.27, plus interest thereon, to the Plaintiffs.

WHEREFORE, Plaintiffs pray for a Judgment against EPA as follows:

1. For a determination that EPA's claim against Plaintiffs for costs associated with implementation of the Final Remedy at OII, or for any other response costs incurred by or to be incurred by EPA in relation to the OII Site pursuant to CERCLA, has been discharged in the Debtor's Case by operation of the terms of the confirmed Plan, the Confirmation Order, and 11 U.S.C. section 1141(d)(1)(A);

2. For a declaration that pursuant to 11 U.S.C. section 524(a)(2) Plaintiffs therefore owe nothing to EPA under CERCLA in relation to the OII Site;

3. For an order requiring EPA to return to Plaintiffs all monies previously paid to EPA under a reservation of rights in connection with the OII Site, with interest at the statutory rate;

4. For the costs of suit, including reasonable attorneys' fees; and

5. For such other and further relief as this Court deems just and proper.

Dated: September 25, 2001

Respectfully Submitted,

PILLSBURY WINTHROP LLP

By: _____

Philip S. Warden, Esq.
Margaret Rosegay, Esq.
Mark D. Houle, Esq.
Attorneys for Plaintiffs Powerine Oil Company and CENCO Refining Company

Bankruptcy. Order Confirming Plan

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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re

POWERINE OIL COMPANY,
a California corporation,

Debtor.

CASE NO. LA 84-07086-RM

Date: April 9, 1985
Time: 9:30 A.M.
Place: Courtroom "C"

ORDER CONFIRMING THIRD AMENDED PLAN (AS MODIFIED)

EXECUTED IN THE ABOVE CAPTIONED DISTRICT THIS 2 DAY OF July, 1985:

The undersigned Bankruptcy Judge, Richard Mednick, at hearings held on April 1 and 9, 1985, considered the confirmation of the Third Amended Plan of Reorganization filed by Powerine Oil Company, the debtor and debtor in possession, ("Debtor") and the modifications thereto which were approved by this Court upon application by the Debtor. The Third Amended Plan of Reorganization and modifications thereto shall hereinafter be referred to collectively as the "Plan".

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Appear at the hearing on April 1 985, were: Herbert Katz and Eldon Pesterfield of Gendel, Raskoff, Shapiro & Quittner, attorneys for the Debtor; Richard W. Havel and Perry L. Landsberg of Sidley & Austin, counsel for First National Bank of Chicago, First Interstate Bank of California, Crocker National Bank, Security Pacific National Bank, Interfirst Bank of Dallas, Republic Bank of Dallas and Banque Paribas (collectively referred to as the "Bank Group"); Marc S. Cohen of Greenberg, Glusker, Fields, Claman & Machtinger, counsel for Aetna Life Insurance Company ("Aetna"), Equitable Variable Life Insurance Company, and the Equitable Life Assurance Society of the United States (collectively "Equitable"), (Aetna, Equitable and Teachers Insurance and Annuity Association of America shall be collectively referred to herein as the "Insurance Companies"); Bennett Silverman of Gibson, Dunn & Crutcher, counsel for Fluor Engineers, Inc. ("Fluor"); David Gould of Danning, Gill, Gould, Joseph & Diamond, counsel for the Committee of Creditors Holding Unsecured Claims ("Creditors Committee"); Theodore Guth of Irell & Manella, counsel for Powerine Enterprises, Inc., Harry R. Rothschild, Harry S. Rothschild and Peter B. Rothschild; Wallace Knox of Burris, Karp & Mooney, counsel for the Oil, Chemical, and Atomic Workers International Union ("OCAW"); Val A. Maiocco of Pray, Price, Williams & Russell, counsel for Noble Construction Company; Daniel J. McCarthy of Hill, Farrer & Burrill, counsel for Alcan Aluminum Corp., General Electric Co., National Distillers & Chemical Co., NI Industries, Inc., McDonnell Douglas Corp., and Stauffer Chemical Company; George Wu Assistant United States Attorney, counsel for the Department of Energy;

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Michael Green trial attorney of the United Stat Department of Justice, Environmental Enforcement Section, for the United States Government in connection with its claims regarding cleanup of the Stringfellow Waste Site; Daniel Robinson Deputy Attorney General for the State of California; and Robert Wishner of Rodi, Pollock, Pettker, Galbraith & Phillips, counsel for J. T. Thorpe.

Appearing at the hearing on April 9, 1985, were: Herbert Katz and Eldon Pesterfield of Gendel, Raskoff, Shapiro & Quittner, attorneys for the Debtor; Richard W. Havel and Perry L. Landsberg of Sidley & Austin, counsel for the Bank Group; Marc S. Cohen of Greenberg, Glusker, Fields, Claman & Machtinger, counsel for Aetna and Equitable; Bennett Silverman of Gibson, Dunn & Crutcher, counsel for Fluor; David Gould of Danning, Gill, Gould, Joseph & Diamond, counsel for the Official Creditors Committee; Theodore Guth of Irell & Manella, counsel for Powerine Enterprises, Inc., Harry S. Rothschild, Harry R. Rothschild and Peter B. Rothschild; Val A. Maiocco of Pray, Price, Williams & Russell, counsel for Noble Construction Company; and Wallace Knox of Burris, Karp & Mooney, counsel for the OCAW.

Upon consideration of the Plan and Disclosure Statement, the evidence presented at the hearings, the pleadings and documents previously filed in the Debtor's chapter 11 case, and the statements and argument of counsel, this Court makes Findings of Fact and Conclusions of Law. The following Findings of Fact, Conclusions of Law, and Order shall be read and interpreted in connection with, and to the extent possible, consistent with the Plan and Disclosure Statement. Capitalized

terms when used he n shall have the same mean g as set forth in the Plan, unless otherwise defined herein. To the extent there is a conflict between the terms of the Findings of Fact, Conclusions of Law and Order, the Plan and the Disclosure Statement, then the terms herein shall control.

A. Good and sufficient notice of the hearings on confirmation of the Plan has been given to creditors, equity security holders, and other parties in interest. A copy of the Plan or summary thereof (except for those modifications which were permitted by Order of this Court without circulation of such modifications to all creditors, equity security holders and parties in interest) has been transmitted to creditors, equity security holders, and other parties in interest.

B. Good and sufficient notice was given by the Debtor, in light of the particular circumstances, for the modifications to the Third Amended Plan which were proposed by the Debtor in accordance with Bankruptcy Rule 3019 at the hearings on April 1 and April 9, 1985. The modifications proposed by the Debtor did not adversely change the treatment of any creditor that did not accept a modification when it was proposed, and, accordingly, all creditors who had accepted the Third Amended Plan were deemed to have accepted said Plan as modified without any further disclosure or solicitation.

C. The Plan has been accepted in writing by the creditors and equity security holders from whom acceptance is required by law, except for the mechanics lien claimants in Class 5 of the Plan. The Plan does impair the rights of Class 5 claimants. The Plan may be confirmed even though Class 5 has

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not accepted the . ., because the Plan is fair nd equitable with respect to Class 5 under §1129(b)(2)(A)(iii) of the Bankruptcy Code.

D. The provisions of chapter 11 of the Bankruptcy Code have been compiled with. The Plan has been proposed in good faith and not by any means forbidden by law.

E. Each holder of a claim or interest will receive or retain under the Plan property of a value, as of Confirmation (which was deemed to be the effective date of the Plan for purposes of §1129(a)(7) of the Bankruptcy Code), that is not less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date.

F. All payments made or promised by the Debtor or by a person issuing securities or acquiring property under the Plan or by any other person for services or for costs and expenses in, or in connection with, the Plan and incident to the case, have been fully disclosed to the Court and are reasonable or, if to be fixed after Confirmation, will be subject to the approval of the Court.

G. The identity, qualifications and affiliations of the persons who are to be directors, officers, or designated representatives, if any, of the Debtor in Possession during the Post-Confirmation Arrangement have been fully disclosed, and the appointment of such persons to such offices or their continuance therein, is equitable and consistent with the interest of the creditors and equity security holders, and public policy.

H. The identity of any insider that will be employed or retained by the Debtor and his compensation has been fully disclosed.

I. The Debtor is presently unaware of any creditors holding Class 5A secured claims under the Plan.

J. The acceptances of the Plan by the Bank Group and Insurance Companies (hereinafter collectively referred to as the "Secured Lenders") are based upon, and are subject to, the accuracy of Debtor's estimate in the Disclosure Statement that the priority and administrative claims to be paid under the Plan would not exceed $7.15 million. It is appropriate for the Court to set a procedure to establish the final date for the filing of the administrative and priority claims to be paid through the Plan.

K. Objections by J. T. Thorpe to the Confirmation of the Plan were withdrawn at the hearing on April 1, 1985. Debtor and J. T. Thorpe, by separate stipulation, have agreed to the election by J. T. Thorpe to participate as a general unsecured creditor in Class 8 under the Plan.

L. Pursuant to stipulation with the Debtor, the claims of the following creditors were allowed, for purposes of voting on the Plan only, in the aggregate amount of $1 million: Alcan Aluminum Corp., General Electric Co., National Distillers & Chemical Co., NI Industries, Inc., McDonnell Douglas Corp., Stauffer Chemical Company, J.B. Stringfellow, Jr., Stringfellow Quarry Co., Stringfellow Quarry Co., Inc., Gwendolyn Stringfellow, William Stringfellow, E. Moe McCook, the Deutsch Company, Rheem Manufacturing Company, Rohr Industries, Inc., Weyerhauser

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Company, Alumax, [illegible], Alumax Mill Products, [illegible], Hunter Engineering, Inc., and Montrose Corporation of California. Each of the foregoing creditors was given one vote for purposes of counting the number of claims which have accepted or rejected the Plan, and each such claim was deemed to have been voted against the Plan.

M. Proof of Claim No. 1448 filed on behalf of the State of California by Montrose Corporation of California, and Proof of Claim #1425 by Alumax, Inc., Alumax Mill Products, Inc., and Hunter Engineering, Inc., through their counsel Rene Tatro, for "Governmental Entities" to the extent deemed a claim on behalf of the State of California were withdrawn in open Court by the representative of the State of California, and the Debtor and the State of California shall submit a separate order for the withdrawal of such proofs of claim.

N. Proof of Claim No. 1391 filed on behalf of the United States Government by Montrose Corporation of California, and Proof of Claim #1425 by Alumax, Inc., Alumax Mill Products, Inc., and Hunter Engineering, Inc., through their counsel Rene Tatro, for "Governmental Entities" to the extent deemed a claim on behalf of the United States of America were withdrawn in open Court by the representative of the United States Government, and the Debtor and the United States Government shall submit a separate order for the withdrawal of such proofs of claim.

O. Objections by Consolidated Freightways to the Confirmation of the Plan were overruled. Said creditor failed to appear at the hearing on Confirmation, and such failure to appear constituted a default under the objection and a failure

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to prosecute the objection. In addition, Consolidated Freightways, a member of Class 8 under the Plan lacked standing to assert that the Plan was not fair and equitable because the Plan was accepted by the requisite number and amount of claimants in Class 6.

P. Debtor has maintained and preserved the refinery and other assets (including licenses, permits and tax net operating losses) in order to explore all reasonable methods of marketing its assets. It has been, and continues to be, a goal of the Debtor to maintain its refinery and other assets in such a manner that it can be sold as a going concern. The Debtor has maintained a limited operation of its business through the purchase, sale and trading of crude oil, the preservation of its interest in the contract for the operation of Parcel A, and the maintenance of the refinery equipment in a warm shut down mode. Such activity has and shall continue to constitute an operation of the Debtors' business under §1141(d)(3)(B) of the Bankruptcy Code. Meanwhile, the Debtor and Secured Lenders are continuing to explore the alternative methods of marketing these assets.

Q. The Debtor's evaluation of the highest and best manner of marketing its assets is subject to the completion of studies and reports on the environmental risks and problems associated with the Debtor's assets. Unless and until such studies and reports are completed it is not feasible for the Debtor to formulate a specific proposal for the marketing of its assets.

R. In the particular circumstances of this case it is appropriate that the Debtor in Possession retain its assets

in the Post-Confirmation Arrangement, and that this Court retain jurisdiction over the Debtor in Possession to the extent necessary to complete the terms and conditions of the Plan.

S. The rights and benefits to be realized by the Equity Security Holder and the Rothschilds, as described in the Plan, are in consideration for future services and concessions in connection with the retention of ownership of the Debtor's stock, and the continued cooperation with the Debtor and Secured Lenders in completing the terms of the Plan by the Equity Security Holder and the Rothschilds.

T. Any of the foregoing Conclusions of Law which may also be Findings of Fact shall be deemed to be Findings of Fact, and any of the foregoing Findings of Fact which may also be Conclusions of Law shall be deemed to be Conclusions of Law.

Based on the foregoing, good cause having been shown, it is hereby ORDERED:

1. The Plan is confirmed. A restated copy of the Plan reflecting the modifications made at the hearings on Confirmation is attached hereto as Exhibit 1.

2. The Debtor shall be discharged and is hereby released from any debt that arose before Confirmation and any debt of a kind specified in Sections 502(g), (h) and (i) of the Bankruptcy Code. All creditors whose debts are discharged by this order are enjoined from instituting or continuing any action or employing any process or engaging in any act to collect such debts from the Debtor or from property of the Debtor or his estate.

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3. The provisions of the Plan and this Order shall bind the Debtor, creditors and equity security holders, whether or not the claim or interest is impaired under the Plan, and whether or not such creditor or equity security holder has accepted the Plan.

4. All executory contracts of the Debtor not assumed as of Confirmation or for which the Debtor has not filed a motion to assume within 45 days of Confirmation shall be deemed and hereby are rejected. Any and all claims for damages arising from the rejection of such executory contracts must be filed with the Clerk of the Bankruptcy Court and served upon the attorney for the Debtor no later than 75 days after Confirmation.

5. The Debtor shall send notice of entry of this order to all creditors, equity security holders, and other parties of interest, including any parties who may have administrative or priority claims which would constitute claims under Classes 1, 2, 3 or 4 of the Plan. Such notice shall also advise all parties of the last day in which they may file all administrative and priority claims, and the procedures therefor. It is hereby directed that the date for the last day to file such claims shall be set forth in the notice, and that such date shall be at least 30 days after the date of service of such notice by mail. Any administrative claim not filed in a timely manner shall be barred and shall not share in the distribution under the Plan.

6. Henry Del Castillo is hereby designated to serve as the Disbursing Agent under the Plan, and shall post a fidelity

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bond to cover the amount of funds which are received or held by the Disbursing Agent from time to time. So long as Henry Del Castillo is employed by the Debtor, he shall serve as Disbursing Agent for no additional fees or compensation. Should Henry Del Castillo discontinue his employment with the Debtor, he may continue as the Disbursing Agent under such terms and for such fees as are approved by this Court, or the Debtor, with the consent of the Secured Lenders and Creditors Committee, may appoint a new person to serve as Disbursing Agent on such terms and for such fees as may be approved by this Court. The Disbursing Agent shall make the payments required under the Plan and shall be subject to the jurisdiction of this Court with respect to the performance of his duties.

7. The Automatic Stay under Section 362 of the Bankruptcy Code, and the Discharge set forth in paragraph 2 of this Order are hereby modified to permit any Class 5 claimant under the Plan (those asserting mechanics lien against the Debtor's real property) to commence or continue the prosecution of a mechanics lien action in any court of competent jurisdiction to determine the amount of such mechanics lien, and whether such mechanics lien is senior to the deed of trust in favor of the Secured Lenders. If such mechanics lien is determined to be senior to the Secured Lenders then the creditor may continue to enforce its claim in accordance with the terms of the Plan. If such mechanics lien is determined to be junior to the Secured Lenders then said mechanics lien shall be null and void against all property of the Debtor and the estate, and the claim of such

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creditor, if otherwise timely filed, will be entitled to participate as a Class 8 claim. Notwithstanding the foregoing, this Court retains jurisdiction over the Class 5 claims and the prosecution of the mechanics lien actions as is necessary to supervise, interpret and enforce the Plan.

6. All claims, rights and actions which are the exclusive rights of the Debtor or this estate against the Secured Lenders, the Equity Security Holder, or any insider of the Debtor shall be and hereby are waived, released and discharged, including any and all rights to recover preferences or fraudulent conveyances, or to equitably subordinate any lien or claim.

9. Upon Confirmation the Debtor shall pay to the Disbursing Agent:

(a) An amount not to exceed $7.15 million to provide for administrative and priority claims (Classes 1, 2, 3 and 4 under the Plan). If, at the expiration of the bar date fixed in paragraph 5 of this Order, the total amount of administrative and priority claims exceeds $7.15 million, the Debtor within 60 days of such bar date shall file all appropriate objections to administrative and priority claims. If the Debtor cannot reduce the allowed amount of such priority and administrative claims to $7.15 million or less, then the Debtor may be deemed to be in default under the Plan. Except upon the express written agreement of the Secured Lenders, no further or additional funds may be sought from or paid by the Debtor in Possession in the Post-Confirmation Arrangement to the Disbursing Agent to fund the payments for the priority and administrative

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claims under the I , except as provided in t Plan for the payment of costs and expenses incurred by certain counsel during the Post Confirmation Arrangement.

(b) An amount to be determined by the Debtor from a review of the claims register and proofs of claim filed in this case to provide for the payment of Class 7 claims under the Plan.

(c) $2.0 million for Class 8 claims.

10. All funds received by the Disbursing Agent, to the extent practicable and consistent with obligations to make disbursements, shall be deposited in interest bearing accounts or certificates of deposit at depositories which have been approved by the United States Trustee. The funds paid to the Disbursing Agent pursuant to subparagraphs 9.(a) and 9.(b) above and the interest thereon which is not eventually required for payment to the respective classes under the Plan, if any, shall be returned to the Debtor in Possession in the Post-Confirmation Arrangement for the benefit of the Secured Lenders. The interest accruing on funds deposited with or received by the Disbursing Agent for distribution to the Class 8 claims pursuant to paragraph 9(c) above shall be retained and added to the funds to be eventually disbursed to said Class 8 claims.

11. On Confirmation, the Creditors Committee may pursue on behalf of the estate claims to recover preferences or fraudulent conveyances (excluding any such claims against Secured Lenders, the Equity Security Holder or insiders of the Debtor which were released pursuant to paragraph 8 of this Order). All recoveries on any such claims shall be paid to the

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Debtor in Possession in the Post-Confirmation Agreement. The Debtor in Possession, after appropriate notice and hearing or as otherwise provided for in the Plan, shall pay from said recoveries the collection costs incurred in connection with such claim, including, but not limited to, attorneys fees, accountants fees, and other costs normally associated with such litigation. Any recovery remaining after the payment of collection costs (the "net recovery") shall be paid by the Debtor in Possession as follows: (a) from the net recoveries up to an aggregate amount of $5.0 million dollars, 50% shall be paid to the Disbursing Agent for Class 8 claims, and 50% shall be paid to the Secured Lenders; and (b) from all net recoveries in excess of an aggregate amount of $5.0 million, 25% shall be paid to the Disbursing Agent for Class 8 claims, and 75% shall be paid to the Secured Lenders. The Creditors Committee may settle any such claims for cash (by present or deferred payments) upon giving Secured Lenders at least 20 days notice and opportunity to be heard. Any settlement of such claims by the Creditors Committee which involves non-cash consideration (such as the allowance, fixing or withdrawal of any claim by a Class 8 creditor) shall, in addition to the normal notice and hearing requirements for the compromise of a claim, require an agreement between the Secured Lenders and the Creditors Committee as to the designated value of the non-cash consideration to the Class 8 claimants for the purpose of allocating the net recovery between the Class 8 claimants and the Secured Lenders. If the Secured Lenders and the Creditors Committee cannot agree on a designated value of the non-cash consideration in connection

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with any settlemen then either party may appl o the Bankruptcy Court upon 20 days notice to the other party to determine such designated value.

12. Except for assets transferred under the Pre-Confirmation Distribution, and these assets made available to the Disbursing Agent under the Plan, upon Confirmation the assets of the estate shall not revest in the Debtor, but rather the Debtor as Debtor in Possession in the Post-Confirmation Arrangement shall continue to hold, manage and control the assets until termination thereof as provided in the Plan and this Order. The designated representatives of the Debtor in Possession in the Post-Confirmation Arrangement shall be Jerry Goldress, and Henry Del Castillo, or such other persons as the court may for cause shown so designate. According to the Post-Confirmation Arrangement the Debtor in Possession shall continue to hold, manage and control the assets for the purpose of carrying out the terms of the Plan relating to marketing in the highest and best manner the Debtor's assets or stock. The Post-Confirmation Arrangement shall continue in accordance with the terms and conditions contained in the Stipulation for Use of Cash Collateral and Other Collateral between the Debtor and Secured Lenders which was approved by court order entered on March 15, 1985. The Debtor in Possession shall file and serve such operating and status reports as may be required by the United States Trustee, and any modification of the reporting requirements presently being followed by the Debtor shall be subject to approval of the Court after appropriate notice and hearing. The Debtor in Possession will have the power and

rights, subject to supervision by and order of this Court, to own, manage, operate, sell, lease or otherwise use the assets of the estate, including, but not limited to, the rights under Sections 363-65, 505, 542-50 and 554 of the Bankruptcy Code. This Court may, upon application of the Secured Lenders or the Debtor, enter further orders directing or modifying the operation of the Debtor in Possession in the Post-Confirmation Arrangement. The assets of the estate shall be held by the Debtor in Possession in the Post-Confirmation Arrangement free and clear of all claims and interests of unsecured creditors and equity security holders, but shall remain subject to all pre-petition and post-petition liens, security interests, claims and other rights of the Secured Lenders. All distributions made from the Post-Confirmation Arrangement (except for such abandonment or surrender of assets to the Debtor as may be hereafter be allowed by this Court) shall be to and for the benefit of the Secured Lenders. The Secured Lenders may from time to time, upon order of the Bankruptcy Court after a hearing on 20 days notice to the Debtor and the United States Trustee, receive interim distributions of funds from the Post-Confirmation Arrangement. The Secured Lenders may by application or motion request that the Debtor in Possession, after notice, hearing and approval of the Bankruptcy Court, abandon or surrender all or a portion of its assets. Such abandonment or surrender will, in the sole discretion of the Secured Lenders, be to the Debtor or Secured Lenders. In the event assets are abandoned or surrendered to the Debtor, the Secured Lenders will release all

of their liens and ims to such assets. Title and possession of assets abandoned or surrendered by the Debtor in Possession will pass to the entity to whom said assets have been abandoned or surrendered. The Debtor in Possession in the Post-Confirmation Arrangement will continue and be operative until all the assets of the estate and/or proceeds from the disposition thereof have been paid to the Secured Lenders or otherwise abandoned or surrendered by the Debtor in Possession, which events are to occur no later than 5 years from the entry of this Order, or such later date as for cause shown may be approved by this Court.

13. Upon Confirmation the Equity Security Holder shall retain its present stock ownership in the Debtor. Said ownership shall be subject to agreements between the Equity Security Holder, Rothschilds, and Secured Lenders in a form substantially similar to that attached hereto as Exhibit 2. The attached agreements between the Secured Lenders, Equity Security Holder and Rothschilds are authorized and approved as being in accordance with, and necessary for the effectuation of the Plan, and the parties thereto have consented to the jurisdiction of this Court to interpret and enforce the terms of their agreements. Notwithstanding the foregoing, the parties may enforce their rights under the agreements without prior leave or authorization from this Court, and the Debtor has waived in connection with any foreclosures by the Secured Lenders on the Debtor's stock all rights to notice of such foreclosure to object that any foreclosure is not commercially reasonable.

14. This Court expressly reserves jurisdiction as is set forth in the Plan and in this Order, and to effectuate and enforce the terms of this Order.

RICHARD MEDNICK,
UNITED STATES BANKRUPTCY JUDGE

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Attorneys for Debtor and Debtor In Possession

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

In re: POWERINE OIL COMPANY, a California corporation, Debtor.	BK NO. LA 84-07086-RM (Chapter 11) DEBTOR'S THIRD AMENDED PLAN OF REORGANIZATION AS MODIFIED IN OPEN COURT ON APRIL 1 and 9, 1985 [No Hearing Set] (Additions are indicated by red-lining, deletions are indicated by brackets)

POWERINE OIL COMPANY, a California corporation, Debtor in the above captioned proceeding ("Debtor"), proposes the following Plan of Reorganization:

I.

INTRODUCTION

The Debtor's predecessor, Rothschild Oil Company, was founded by Harry S. Rothschild in 1936 as a broker and distributor of refined petroleum products in Southern California. Prior to

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World War II, Rothschild Oil Company acquired a cracking unit in Santa Fe Springs, California and commenced refinery operations at the site of the present refinery. The operations continued to grow, and in 1959 they were spun off into a new company, Powerine Oil Company. By the late 1970's the Debtor's fixed plant consisted of an integrated system for receiving, storing and refining crude oil, and for storing and distributing finished products. The refinery had a capacity in excess of 44,000 barrels of crude oil per day, although it could only process relatively light crudes at this rate of throughput.

Commencing in 1978, the Debtor began to borrow significant sums of money in order to upgrade its refinery operations to handle an expected need to refine heavier crudes containing more sulfur. In 1978, the Debtor entered into an agreement with Aetna Life Insurance Company ("Aetna"), Equitable Variable Life Insurance Company, The Equitable Life Assurance Society of the United States (together "Equitable") and Teachers Insurance and Annuity Association of America ("Teachers") (Aetna, Equitable and Teachers are collectively referred to as the "Insurance Companies") to borrow a total of $21,000,000. In May of 1981, the Debtor arranged to borrow up to an additional $229,600,000 from the First National Bank of Chicago, United California Bank (now First Interstate Bank of California), Crocker National Bank Security National Bank, First National Bank in Dallas (now Interfirst Bank Dallas N.A.), Republic National Bank of Dallas (now RepublicBank Dallas N.A.) and Banque de Paris et des Pays-bas (now Banque Paribas) (hereafter collectively referred to as the "Bank Group"). At the time of the loan by the Bank Group, the Bank Group and the

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Insurance Companies (hereafter collectively referred to as the "Secured Lenders") entered into a Trust Agreement and Collateral Sharing Agreement by which they agreed to share a joint security interest in substantially all of the assets of the Debtor. Under their Collateral Sharing Agreement and Trust Agreement, Union Bank was appointed as Trustee to act on behalf of the Secured Lenders as a single group.

Unfortunately, the expected increase in demand for the refining of heavy sour crudes did not materialize. Indeed, in the early 1980's margins in the refinery industry fell drastically and by 1983 the Debtor was having difficulty meeting interest payments on the loans to the Secured Lenders. On March 26, 1984 the Debtor filed the petition initiating this case under Chapter 11 of the Bankruptcy Code.

At the time of the filing of the petition in this case, the Company owed approximately $18,500,000 to the Insurance Companies and approximately $264,000,000 to the Bank Group, including post-petition advances made by the Bank Group on pre-petition letters of credit. The approximate amount owing by the Debtor to the unsecured creditors is $21,000,000. Additionally, the Department of Energy asserts that is owed approximately $22,500,000.00, which includes approximately $11,700,000.00 interest. The Debtor disputes this claim. There are also disputed mechanics lien claims of approximately $9,000,000.

The Company's major tangible asset is its refinery and associated property, plus certain cash collateral consisting primarily of accounts receivable, crude products and cash. The Debtor also believes that there is substantial value inherent in

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certain intangibles. its net operating loss ca[illegible] forward (which currently exceeds $145,000,000); its investment tax credits carry forward which presently exceeds $20,000,000; its permits to operate a refinery in the Southern California area, which permits will be very difficult to obtain in the future; its permits and franchises for the operations of pipelines and terminals; and certain fully paid up licenses to use patented processes in its refining operations which might require substantial investments to obtain at the present time. The Debtor believes that the transfer of these intangible assets will be greatly simplified if a sale of the refinery could be accomplished through a sale of the Debtor's existing stock, all of which is owned by Powerine Enterprises, a California corporation.

It is apparent to the Debtor and to the Secured Lenders, who hold a pre-petition security interest in substantially all of the assets of the Debtor, that the assets cannot be sold for a sufficient amount to cover all of the claimed secured debt which, with the approximate $9,000,000 disputed secured claims, aggregates approximately $290,000,000. The Secured Lenders and the Debtor anticipate that a sale of the assets to a user/buyer could bring substantially more than would be realized from a straight liquidation sale. For over a year preceding the filing of the petition efforts were made by the Debtor to find a user/buyer but none had been found as of the date of the commencement of this reorganization case on March 26, 1984. The Secured Lenders have supported the Debtor In Possession in a program for the wind down and termination of the operations of its refinery which the parties believe will preserve its ongoing business value and still

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minimize the losse The parties also believe that the net operating losses experienced by the Debtor during the past few years would be of significant interest to a user/buyer.

The Debtor believes that the provisions of this Plan will assist in the preservation of the value of the operating permits, the pipeline franchises, and the paid up licenses, and the potential value of the Net Operating Loss.

II.

DEFINITION OF TERMS

When used in this Plan of Reorganization the following terms shall have the meanings specified below:

BANK GROUP: The First National Bank of Chicago, First Interstate Bank of California, Crocker National Bank, Security Pacific National Bank, Interfirst Bank Dallas, N.A., Republicbank Dallas, N.A. and Banque Paribas, collectively.

BANK GROUP EXPENSES: All advances by the Bank Group or members of the Bank Group on letters of credit outstanding at the commencement of the Chapter 11 case, and all costs and expenses (except payments to Class 10 claimants) incurred by the Bank Group in connection with the preservation, operation or disposition of collateral, other assets of the Debtor or the Debtor's stock (including all advances after Confirmation to preserve or operate the refinery until Final and Complete Disposition) and all costs and expenses incurred by the Bank Group in the assertion or protection of the interests of the Bank Group (such as costs of litigation, appearances in the Reorganization case, and the

negotiation and c irmation of the Plan, etc. but not including costs incurred or liabilities adjudicated in connection with disputes within, among or between the Class 6A and 6B claimants, the members of the Bank Group, or any of the Insurance Companies. By this exclusion it is intended that Bank Expenses shall not include costs and expenses relating to controversies and/or litigation between the Bank Group and the Insurance Companies, which arise out of or relate to their respective rights and obligations to administer or enforce their claims against the Debtor and their security interests in the assets of the Debtor under the various loan, trust, collateral sharing and related agreements. However, Bank Expenses shall include costs or expenses relating to disputes, controversies and/or litigation by any creditor or representative of the estate against the Bank Group or Insurance Companies, including any action asserted by any Insurance Company in its capacity as a general creditor (secured or unsecured) of the estate, or as a representative of the estate.

BANKRUPTCY COURT: The United States Bankruptcy Court for the Central District of California, before which Debtor's Reorganization case is pending, or any successor court, including the United States District Court, which may subsequently take over jurisdiction of this reorganization case.

CLAIM: Any right to payment from Debtor arising before the Effective Date, whether such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or any right arising before the Effective Date to an equitable remedy for breach of performance when such breach gives right to payment

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from Debtor, whether such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

CONFIRMATION: The date on which the Order of Confirmation by the Bankruptcy Court has become final and nonappealable or, at the sole option of the Secured Lenders, a point in time after the entry of the Order of Confirmation but prior to the time when such order has become final and nonappealable.

COMPENSATION: The gross amount of any salary, bonus or dividend paid to the Rothschilds in any manner, directly or indirectly, or to be paid in the future under any prior or present employment agreement, or any distribution on a creditor's claim arising as a result of any termination of a prior or present employment agreement.

DEBTOR: Powerine Oil Company, a California corporation, Debtor and Debtor In Possession in this Reorganization Case.

DISBURSING AGENT: The disbursing agent designated in the Order of Confirmation.

EFFECTIVE DATE: The point in time at which the Post Confirmation Arrangement is no longer operative.

EQUITY SECURITY HOLDER: Powerine Enterprises, a California corporation, which is the sole holder of an interest in the capital stock of the Debtor, or any other equity security interest of the Debtor as defined in Bankruptcy Code Section 101(15).

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FAIR RATE of RETURN: One Hundred Ten rcent (110%) of the Corporate Base Rate as determined from time to time by First National Bank of Chicago.

FINAL AND COMPLETE DISPOSITION: When the Bank Group is disbanded or dissolved in relation to its present liens and claims against Powerine, and in relation to any loans or other extensions of credit made by the Bank Group as a whole to facilitate a sale or other disposition of the stock or assets of Powerine.

INSURANCE COMPANIES: Aetna Life Insurance Company, The Equitable Assurance Society of the United States, Equitable Variable Life Insurance Company and Teachers Insurance and Annuity Association of America, collectively.

NET PROCEEDS: The funds applied by the Class 6A and 6B claimants against their pre-chapter 11 claims from any of the following:

1. All proceeds received by Class 6A and 6B claimants under this Plan,

2. All payments on policies of Title Insurance insuring the Deed of Trust on the Debtor's refinery held in favor of the Class 6A and 6B claimants by the Union Bank as trustee, and

3. All proceeds from any present or newly issued stock in the Debtor or any of the Debtor's assets and other interests; less (a) all Subsequent Advances by the Bank Group or Insurance Companies including a Fair Rate of Return on such advances, and (b) all Bank Group Expenses including a Fair Rate of Return on such advances. Net Proceeds expressly includes any deferred payments or any other consideration received before or after the

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Effective Date by [illegible] Class 6A and 6B claimants [illegible]om Debtor's assets or from the Debtor's stock.

ORDER OF CONFIRMATION: The Order of the Bankruptcy Court [and the supervising or referring United States District Court] confirming the Plan pursuant to Bankruptcy Code Section 1129.

PLAN: This Amended Plan of Reorganization in its present form or as it may be amended or modified from time to time pursuant to an Order of the Bankruptcy Court.

POST-CONFIRMATION ARRANGEMENT: Except for the assets transferred pursuant to the Pre-Confirmation Distribution and those made available to the Disbursing Agent pursuant to Article VIII(B) below, upon Confirmation of the Debtor's Plan, the Debtor will continue to hold, manage and control its assets as a Debtor In Possession subject to the terms and conditions contained in the Stipulation for Use of Cash Collateral and Other Collateral between the Debtor and Secured Lenders which was approved by Court order entered [November __, 1984] March 15, 1985 or as contained in any subsequent order effecting the Post-Confirmation Arrangement.

Subject to approval by the Secured Lenders, the Debtor shall designate an individual or individuals to manage the Debtor's business and assets while the Post-Confirmation Arrangement is operative. In accordance with the preceding paragraph, during the Post-Confirmation Arrangement the Debtor In Possession shall have the authority to pay all administrative expenses or claims that accrue from Confirmation to the Effective Date.

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The Post nfirmation Arrangement wil ontinue until the time when the following events have occurred in the following order, at the election of the Secured Lenders:

1. The Debtor's refinery and all other assets or corporate stock are sold; or

2. The Secured Lenders direct the Debtor In Possession to conduct an auction sale of its refinery and all other assets either as a unit or in a piecemeal sale; or

3. The Debtor In Possession surrenders or abandons all or a portion of its assets as directed by the Secured Lenders.

In the event the Secured Lenders elect to require the Debtor In Possession to abandon or surrender all or a portion of its assets, the abandonment or surrender will either be to the Secured Lenders or to the Debtor, in which latter case the Secured Lenders will release all of their liens. Title and possession of the assets abandoned or surrendered will pass to the entity to whom the property is abandoned or surrendered. The party or parties to whom any of the assets are abandoned or surrendered will be at the sole election of the Secured Lenders.

The Debtor's stock, which is held by Powerine Enterprises, a California corporation, shall be endorsed without designating the endorsee and transferred to Union Bank which shall hold the stock as additional security for the Secured Lenders. In the event the refinery is abandoned to the Debtor, the stock shall be returned to Powerine Enterprises. Otherwise Union Bank shall hold the stock and take instructions pursuant to the agreement(s) between the Secured Lenders and Union Bank.

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The Deb In Possession and Powerir Enterprises agree that any disposition or transfer of the stock as directed by the Secured Lenders and effected by Union Bank shall constitute a commercially reasonable sale of the stock pursuant to the requirements of Division 9 of the California Commercial Code, and Powerine Enterprises waives any right to notice of any disposition of the stock and all of the other rights of a debtor under Division 9 of the California Commercial Code.

The law firm of Gendel, Raskoff, Shapiro & Quittner will continue to represent the Debtor and Debtor In Possession during the Post-Confirmation Arrangement. The law firm of Danning, Gill, Gould, Joseph & Diamond will continue to represent the committee of creditors holding unsecured claims ("Creditors Committee"). Both firms will send the Debtor In Possession monthly statements for fees and costs on their regular billing cycle. The Secured Lenders will also be sent a copy of the monthly statements and shall have ten (10) days from the date of the statements to object to payment. Absent an objection, the Debtor In Possession will pay the fees and costs. The firms will apply every six (6) months to the Bankruptcy Court for approval of the fees and costs paid during the Post-Confirmation Arrangement. Fees and costs paid as described above for the Creditors Committee counsel may not exceed the sum of $50,000. Fees and costs exceeding this amount for Creditors Committee counsel shall be paid from the funds described in Part VII(B) below after application by the Bankruptcy Court.

Within 30 days after the completion of environmental studies, but in no event later than 1 year after Confirmation, the Post-Confirmation Arrangement shall present an asset disposition

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plan with specific ..es and milestones to be a ..oved by the Court, after notice to interested parties. For cause shown and upon application after notice to interested parties, the Court may approve modifications of the asset disposition plan as proposed by the Post-Confirmation Arrangement.

PRE-CONFIRMATION DISTRIBUTION: Distributions of Sequestered Funds or other cash collateral to the Insurance Companies made prior to Confirmation of the Debtor's Plan and/or Distributions of Sequestered Funds and other cash collateral to a trust account for the benefit of the Insurance Companies made prior to Confirmation of the Debtor's Plan and distributed from the trust account to the Insurance Companies any time on or after Confirmation, in each case pursuant to the Bankruptcy Court's Order approving the Debtor's Stipulation for Use of Cash Collateral and other Collateral. The amount of Pre-Confirmation Distribution totals $2,100,000.00 plus interest accruing in the trust account.

PURCHASER: A party or parties, other than an affiliate of the Bank Group or Insurance Companies, to whom all of the Debtor's present or newly issued stock or assets are transferred by the Debtor, or by the Bank Group and Insurance Companies before or after the Effective Date.

REORGANIZATION CASE: This reorganization case which commenced on March 26, 1984 and is designated as Case No. LA 84 07086 (RM) and which is presently pending before the Bankruptcy Court.

ROTHSCHILDS: Harry R. Rothschild, Harry S. Rothschild and Peter B. Rothschild, collectively.

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SEQUESTERED FUNDS: Funds sequestered by the Debtor pursuant to Court order in an account subject to the claims of the Insurance Companies. The funds were ordered to be sequestered in connection with numerous disputes among the Debtor, the Bank Group and Insurance Companies relating to the right of the Debtor to use cash collateral.

SUBSEQUENT ADVANCES: All post-petition advances (less any amounts received by Class 6A or 6B claimants and applied against such advances) made by the Bank Group or Insurance Companies in accordance with their settlement agreement dated as of October 23, 1984 to the Debtor including, but not limited to, DIP financing, all advances on letters of credit, if any, issued to the Debtor as Debtor In Possession after the commencement of the chapter 11 case, and amounts paid or advanced to or on behalf of the Debtor to fund this Plan (except any payments to the Class 10 claimant). No such advances have been made as of the date of filing this Amended Plan.

III.

CLASSIFICATION OF CLAIMS AND EQUITY SECURITY INTERESTS

Claims and Equity Security Interests are placed in the following classes, which are set forth in order of their priority:

CLASS 1: Allowed unsecured claims entitled to priority pursuant to Bankruptcy Code Section 507(a)(1). Class 1 claims consist of the costs and expenses of administration of the Reorganization Case through the date of Confirmation, including reimbursement for the expenses of and compensation for services

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rendered by the appointed attorneys and other professional persons employed by the Debtor, in such amounts as may be allowed by the Bankruptcy Court.

CLASS 2: Allowed unsecured claims entitled to priority pursuant to Bankruptcy Code Section 507(a)(3). Class 2 claims consist of claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, earned by an individual during the 90-day period prior to the commencement of the Reorganization Case in such amounts, not to exceed $2,000 for each such individual, as may be allowed by the Bankruptcy Court.

CLASS 3: Allowed unsecured claims entitled to priority under Bankruptcy Code Section 507(a)(4). Class 3 claims consist of claims for contributions to employee benefit plans arising from services rendered during the 180 day period prior to the commencement of the Reorganization Case in such amounts limited for each individual to the unused portion of that individual's $2,000 allowance for a Class 2 claim, as may be allowed by the Bankruptcy Court.

CLASS 4: Allowed unsecured claims entitled to priority pursuant to Bankruptcy Code Section 507(a)(6). Class 4 claims consist of unsecured claims of governmental units for taxes or duties of the kind specified in Bankruptcy Code Section 507(a)(6), in such amounts as may be allowed by the Bankruptcy Court.

CLASS 5: Allowed secured claims of parties other than the Bank Group and Insurance Companies which are secured by a mechanics lien or other statutory liens of similar nature against the Debtor's real property assets. If the liens are senior in priority to those of the Secured Lenders, they will participate as

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allowed secured claims to the extent the collateral has a value equal to or greater than the aggregate debt which the lien secures. To the extent the liens are junior in priority to the liens of the Secured Lenders, said claimants will only participate as Class 8 claimants.

CLASS 5A: The Debtor will identify every party that the Debtor knows of which holds or asserts a lien or encumbrance on any asset of the Debtor. This class will only cover the secured portion of such claims.

CLASS 6A: The allowed secured and unsecured claims of the Bank Group (including any post petition liens or priority claims held as adequate protection for the pre-petition claims).

CLASS 6B: The allowed secured and unsecured claims of the Insurance Companies (including any post-petition liens or priority claims held as adequate protection for pre-petition claims).

CLASS 7: Allowed unsecured claims, other than Class 8 claims, not entitled to priority under the Bankruptcy Code which are in the amount of $300 or less or as to which the claimant agrees to reduce his claim to $300 or less, including the allowed claims of those entities or individuals claiming damages under executory contracts rejected during the Reorganization Case or under the terms of the Plan.

CLASS 8: Allowed unsecured claims, other than Class 7 claims, not entitled to priority under the Bankruptcy Code that exceed $300, including the allowed unsecured portion of the claims held by the members of Classes 5 and 5A, and claims of those entities or individuals for damages resulting from the

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EXHIBIT 1
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rejection of executory contracts during the reorganization case or pursuant to the Plan. The Debtor and any designated representative of the estate specifically reserves the right to have the Court determine whether any Class 8 claim should be subordinated pursuant to applicable bankruptcy law.

[CLASS 9: United States Department of Energy claim approximating $22,514,846 arising out of alleged violations of the Mandatory Petroleum Price Regulations in connection with the refining and resale of crude oil.]

CLASS 10: Allowed claims of the Equity Security Holders.

IV.

CLAIMS NOT IMPAIRED

The claims of Classes 1, 2, 3, 4, 5, 5A and 7 are unimpaired according to the terms of this Plan.

V.

CLAIMS IMPAIRED

The claims of Classes 6A, 6B, 8, [9] and 10 are impaired under the terms of this Plan.

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VI.

TREATMENT OF NON-VOTING (UNIMPAIRED) CLASSES

All allowed claims included in Classes 1, 2, 3, 4, and 7 shall be paid by the Disbursing Agent (from such cash or other assets as are deposited with the Disbursing Agent under paragraph VIII B(1) of this Plan) as soon as practicable after Confirmation and a final order of allowance, except to the extent that the holder of any such claim has agreed in writing to a different treatment.

Claimants holding mechanics liens that are determined to be senior to the liens of the Secured Lenders shall retain their lien against the Debtor's assets and, after Confirmation, shall be free to pursue actions to foreclose their liens in an appropriate State Court forum. Upon the sale of the refinery, [or the stock,] the sale [shall be] may be made free and clear of such liens pursuant to 11 U.S.C. § 363 and the liens of claimants holding mechanics liens that are claimed to be senior to the lien of the Secured Lenders shall be transferred to the proceeds of sale to the same extent and priority as existed prior to the sale.

At such time as there is a proposed sale of the refinery, the Debtor shall return the sale to the Bankruptcy Court for determinations, including among other things, of adequate protection, as that term is used in 11 U.S.C. § 363, for those members of Class 5 whose mechanics liens are claimed to be senior to the liens of the Secured Lenders. A sale free and clear of liens shall not be authorized unless the order approving such sale

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provides the source and mechanism for payment pursuant to Part VIII C (2) below.

The lien of claimants holding mechanics liens that are junior to the liens of the Secured Lenders will be voided in accordance with Section 506 of the Bankruptcy Code and the allowed unsecured claims of such claimants will receive as distribution as a member of Class 8.

All allowed claims included in Class 5A shall receive in satisfaction of the secured portion of their claims, at the option of the Debtor, the property in which each claimant asserts a lien, or payment from the Disbursing Agent of the full amount of the allowed secured claim as soon as practicable after Confirmation and final order of allowance.

VII.

TREATMENT OF VOTING CLASSES

A. CLASS 6 - CLAIMS OF THE BANK GROUP AND THE INSURANCE COMPANIES

1. Subject to the rights of Class 5 claimants pursuant to this Plan, if on or before Confirmation, all of the assets and interests of the Debtor have been sold and conveyed to a Purchaser, then the Class 6A and 6B claimants shall receive upon Confirmation, except for the Pre-Confirmation Distribution and the funds or assets made available to the Disbursing Agent for Classes 1, 2, 3, 4, 5A, 7 and 8 in accordance with paragraph VIII(B) of this Plan, all the assets and interests in the Debtor's estate including all proceeds from the sale or conveyance of any stock in

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the Debtor, provid , however, that the obliga n of the Bank Group to the Class 10 claimants as set forth below shall survive Confirmation.

2. Subject to the rights of Class 5 claimants pursuant to this Plan, if as of Confirmation there has not been a sale of all of the Debtor's assets and interests to a Purchaser, then the Class 6A and 6B claimants shall retain all their security interests in the Debtor's assets, except for the Pre-Confirmation Distribution and the funds or assets made available to the Disbursing Agent for Classes 1, 2, 3, 4, 5A, 7 and 8 in accordance with paragraph VIII(B) of this Plan, and shall be entitled through the Post-Confirmation Arrangement to all the proceeds from the disposition of any assets or interests which may be held by Debtor In Possession, and from the disposition of any stock in the Debtor presently or hereafter issued, provided, however, that the obligation of the Bank Group to the Class 10 claimants as set forth below shall survive Confirmation. On Confirmation all present stock or newly issued stock in the Debtor, and all the Debtor's assets and other interests shall be conveyed to the Post-Confirmation Arrangement.

3. Any proceeds for the Class 6A and 6B claimants under paragraphs 2 and 3 above shall first be used to repay any Subsequent Advances, and then divided among the Bank Group and Insurance Companies pursuant to the terms and allocations provided in the settlement agreement. Any decisions to be made or actions to be taken by the Class 6A and 6B claimants under this Plan or thereafter to effectuate the provisions of this Plan shall be made pursuant to the procedures set forth in that certain settlement

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agreement dated as of October 23, 1984 between the Class 6A and 6B claimants.

B. CLASS 8 - ALLOWED UNSECURED NON-PRIORITY CLAIMS IN EXCESS OF $300

All allowed claims in Class 8 shall be paid in cash on pro-rata share of $2,000,000 to be included in the deposit, which payment shall be in full settlement, satisfaction and release of all such claims. In addition, upon Confirmation, a percentage of the net recovery (after the payment of all collection costs, including but not limited to attorney's fees, accountant's fees and other costs normally associated with such litigation) from causes of action for preferences and fraudulent conveyances (excluding any which may be asserted against the Secured Lenders and insiders of the Debtor) shall pass to the Official Committee of Creditors holding unsecured claims as a representative of the estate pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code. The Class 8 claimants shall receive 50% of the first net $5,000,000 so recovered. Class 8 shall receive 25% of all net sums so recovered exceeding $5,000,000.00. The balance of the net recovery shall be paid to the Debtor pursuant to the Post-Confirmation Arrangement subject to the liens and claims of the Class 6A and 6B claimants.

Subject to approval and allowance by the Bankruptcy Court, any professional fees incurred by the Committee after Confirmation, up to $50,000.00, will be paid pursuant to the Post-Confirmation Arrangement. Professional fees exceeding that amount will be paid from the funds so recovered or otherwise

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available for Class All such fees will be subject to Bankruptcy Court review and approval.

The Debtor and any designated representative of the estate specifically reserves the right to have the Court determine whether any Class 8 claim should be subordinated pursuant to applicable bankruptcy law.

Class 8 claimants include certain individuals and entities which have filed claims (the "Stringfellow claimants") against Debtor arising out of that action in the United States District Court for the Central District of California entitled United States of America, et al. v. J. B. Stringfellow, Jr., et al., bearing Case No. CV-83-2501-JMI (Mcx) (the "Stringfellow action"), and several actions before the Superior Court of the State of California for the County of Riverside entitled Christine Durrette Kelly, et al. v. J. B. Stringfellow, Jr., etc., et al., bearing Case No. 165667, Cipriano Aguilar v. J. B. Stringfellow, Jr., etc., et al., bearing Case No. 167122, Penny Newman v. J. B. Stringfellow, Jr., etc., et al., bearing Case No. 165994, and Ethan Y. Abel v. J. B. Stringfellow, Jr., etc., et al., now known as Robert M. Ames, et al., v. J. B. Stringfellow, Jr., etc., et al., bearing Case No. 167173 (collectively referred to as the "Riverside County Superior Court actions").

Debtor shall, prior to May 1, 1985, use its best efforts to: (1) file claims with all insurance companies providing coverage to Debtor during the period January 1, 1955, through April 1, 1985, (the "liability carriers") which claims shall include copies of the claims of the Stringfellow claimants, shall report possible liability of Debtor to the Stringfellow claimants,

and shall otherwise comply with requirements under policies issued to Debtor by the liability carriers; and (2) provide a true and correct copy of all documents listed on Exhibit "C" hereto, in accordance with the definitions set forth therein, to one law firm to be designated by the Stringfellow claimants prior to May 1, 1985, and which designation Debtor's counsel shall be notified of prior to May 1, 1985. In the event Debtor is unable to meet the foregoing obligations prior to May 1, 1985, through its best efforts, Debtor shall continue to use its best efforts to meet said obligations as soon as possible.

Upon confirmation of this Plan, the automatic stay of 11 U.S.C. Section 362 shall be modified such that holders of Stringfellow claims may (1) proceed with discovery against Debtor, as a non-party to the Stringfellow action and to the Riverside County Superior Court actions without need for further application to the Bankruptcy Court, pursuant to Federal Rules of Civil Procedure, Rules 26 et seq., and Code of Civil Procedure Sections 1985, et seq.; (2) pursue legal action directly or in the name of the Debtor against the liability carriers based upon the matters set forth in the claims of the Stringfellow claimants; and/or (3) pursue legal action directly against Debtor whether in the Stringfellow action, the Riverside County Superior Court actions, or in new actions not yet filed, as qualified above.

The right of the Stringfellow claimants to pursue legal action directly against Debtor, as provided for in the preceding paragraph, shall not be construed so as to permit the Stringfellow claimants to recover any sums resulting from any judgments which may hereafter be rendered in excess of the sums which they are

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otherwise entitled under the Plan as Class 8 laimants by virtue of the Proofs of Claim filed by the Stringfellow claimants on or before March 1, 1985 in this Reorganization Case. The Stringfellow claimants, however, shall be permitted to recover from the liability carriers sums in excess of such payments that the Stringfellow claimants are entitled to under Plan.

By this Plan, Debtor also assigns to the Stringfellow claimants all right, title, and interest in the proceeds which would otherwise be paid to Stringfellow claimants by insurance carriers of any and all claims filed or to be filed by Debtor and/or the Stringfellow claimants with the liability carriers relating to the Stringfellow action and/or the Riverside County Superior Court actions, relating to any claims of the String-fellow claimants against Debtor, and/or relating to possible liability of Debtor to the Stringfellow claimants. Said assign-ment shall not be construed as transferring to the Stringfellow claimants any right, title, or interest in claims or proceeds of claims filed with the liability carriers except as set forth in the preceding sentence. Debtor will use its best efforts to cooperate with the Stringfellow claimants and not to impair any actions taken by the Stringfellow claimants seeking compensation or reimbursement from the liability insurers.

[C. CLASS 9 - DEPARTMENT OF ENERGY

The Class 9 claim as a fine or penalty not in compensation for actual pecuniary loss, is subordinate to the claims of Class 8 and shall not receive a distribution from the Debtor.]

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D. CLASS 10 ITY SECURITY HOLDER

Class 10 shall receive no distribution from the Debtor. Upon Confirmation, mutual general releases in a form substantially similar to that attached hereto as Exhibit A (or such other form as may be mutually agreed to by each party thereto) shall be exchanged between the Equity Security Holder, its shareholders and Rothschilds on the one hand, and each of the Secured Lenders on the other. The Equity Security Holder shall receive from the Bank Group an amount equal to the following percentages of any Net Proceeds:

NET PROCEEDS REALIZED BY BANK GROUP & INSURANCE COMPANIES	PERCENTAGE PAYABLE TO SHAREHOLDER
$ 0 - 21.7 - Million	0
$ 21.7 - 28.7 - Million	5
$ 28.7 - 43.7 - Million	10
$ 43.7 - 50.7 - Million	15
$ 50.7 - 58.7 - Million	12.5
$ 58.7 Million +	10

By way of illustration if the Net Proceeds total $50.7 million then the participation of the Equity Security Holder would be $2,900,000 computed as follows: $350,000 which is 5% of $21.7 to $28.7 million; plus $1,500,000 which is 10% of $28.7 to $43.7 million; plus $1,050,000 which is 15% of $43.7 to $50.7 million. The amount due the Equity Security Holder hereunder shall be reduced by the amount of Compensation received by the Rothschilds from Powerine Oil Company or the Debtor from or

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after March 26, 1984. The distribution of a percentage of the Net Proceeds to the Equity Security Holder shall be made from, and of a like kind as the proceeds held by the Bank Group. Payment shall be made upon Final and Complete Disposition, provided that interim disbursements may be made in accordance with an Agreement which will contain provisions for an escrow substantially similar to that which is attached as Exhibit "B" (or such other form as may be mutually agreed to by the parties).

VIII.

MEANS FOR EXECUTION OF THE PLAN

The Plan shall be executed by means of the following, which shall be deemed to have transpired upon Confirmation:

A. TRANSFER OF STOCK AND ASSETS

With the exception of the Pre-Confirmation Distribution and those assets of Debtor transferred to the Disbursing Agent pursuant to the provision of paragraph VIII B below, upon Confirmation all assets and capital stock of the Debtor shall be held or transferred pursuant to the Post-Confirmation Arrangement for the benefit of the Secured Lenders.

B. DEPOSIT OF FUNDS WITH DISBURSING AGENT AND PRE-CONFIRMATION DISTRIBUTION

1. Upon Confirmation, cash or other assets of the Debtor shall be deposited with the Disbursing Agent for the payments to be made to classes 1, 2, 3, 4, 5A, 7 and 8 in an

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amount and manner be fixed by the Bankruptcy Court. It is expressly recognized that the Secured Lenders shall not be required to advance any funds to provide this deposit. The Disbursing Agent shall place the funds in an interest bearing account until the amount and manner of payment is fixed by the Bankruptcy Court. All interest earned on the deposit for Class 8 claimants shall inure to the benefit of that class. Except for the principal and interest inuring to the benefit of Class 8, the Disbursing Agent shall return to the Post-Confirmation Arrangement any funds including interest remaining after the payment of all allowed claims.

2. Upon Confirmation, the Debtor In Possession shall cause any remaining Pre-Confirmation Distribution in the trust account to be released to the Insurance Companies.

C. IMPLEMENTATION OF PLAN

1. Notwithstanding any other provisions of this Plan of Reorganization, claims objected to by the Debtor or by any other party in interest shall be paid in accordance with the treatment of claims of that class under the Plan to the extent allowed by final order of the Court.

2. In the event of a sale or other disposition of the Debtor's assets pursuant to the Post-Confirmation Arrangement, the liens of Class 5 claimants that are senior to the liens of the Secured Lenders shall be transferred to the proceeds of sale to the same extent and priority as existed prior to the sale. Said liens shall be paid cash in full when the extent and priority of such liens are determined by a final, nonappealable State court

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order or judgment

IX.

EFFECT OF CONFIRMATION

On Confirmation, the Debtor and its property shall be released and discharged from any and all claims or interests of the holders of claims or the Equity Security Holder, except as otherwise provided in the Plan or Order of Confirmation. Any and all claims or causes of actions which are held exclusively by the Debtor's estate under the Bankruptcy Code including, but not limited to, claims to recover preferential transfers, to set aside fraudulent conveyances, and to equitably subordinate claims shall, except as provided in paragraph VII B above and claims under 11 U.S.C. §§ 542 and 543, be forever waived and released by the Debtor and the estate, and such claims may not thereafter be pursued by any other representative of the estate or creditor of the estate. Upon Confirmation, the assets of the estate shall remain vested in the Debtor In Possession pursuant to the Post-Confirmation Arrangement. Upon the Effective Date, any such assets not previously disposed of by the Post-Confirmation Arrangement shall revest in the Debtor.

X.

MODIFICATION OF PLAN

The Debtor may propose amendments or modifications of the Plan at any time prior to Confirmation if the Bankruptcy Court

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determines in acco nce with Bankruptcy Rule 3 , that the proposed modification does not materially or adversely affect the interest of any holder of a Claim or the Equity Security Holder who has not in writing accepted such modification. If the Bankruptcy Court makes such a determination and approves such a modification, it shall be deemed accepted by all holders of Claims or the Equity Security Holder who have previously accepted the Plan.

XI.

PROVISIONS REGARDING EXECUTORY CONTRACTS

Any executory contract or unexpired lease of Debtor which has not already been or which is not assumed by the Debtor within 45 days following Confirmation shall be deemed to have been rejected by the Debtor. The filing of a motion to assume an executory contract or unexpired lease within 45 days following Confirmation shall satisfy this provision.

XII.

DEFAULT UNDER THE PLAN

The failure of the Debtor to deposit, deliver or pay any cash or other assets required to be paid or delivered to effectuate this Plan shall constitute an event of default within the meaning of § 1112(b)(8) of the Bankruptcy Code.

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XIII.

JURISDICTION OF THE COURT

As of Confirmation, the Bankruptcy Court shall retain such jurisdiction as is necessary and appropriate to implement the provisions of this Plan, including but not limited to the following:

1. The classification of any claim and the reexamination of claims which have been allowed as of the Date of Confirmation;

2. Hearing and determining any objection made by the Debtor, or any other party in interest, to any claim (including claims arising from the rejection of any executory contract) or Equity Security Interest. The failure by the Debtor, or any other party in interest, to object to, or to examine, any claim for the purposes of voting shall not be deemed to be a waiver of the Debtor's, or any other party's in interest, right to object to, or to examine, any claim for purposes of determining allowability;

3. Determination of all questions and disputes regarding title to the assets of the estate;

4. The correction of any defect, the curing of any omission, or the reconciliation of any inconsistency in this Plan or the Order of Confirmation as may be necessary to carry out the purposes and intent of this Plan;

5. The modification of this Plan after confirmation pursuant to the Bankruptcy Rules, the Bankruptcy Code, and the rules of the Bankruptcy Court;

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6. To enforce and interpret the terms and conditions of this Plan;

7. Entry of any Order including injunctions, necessary to enforce the title, rights and powers of the Debtor and to impose such limitations, restrictions, terms and conditions of such title, rights and powers as this Court may deem necessary to protect the Debtor from actions taken by the holders of Claims arising before the Petition Date;

8. To hear and determine any adversary proceedings brought under 11 U.S.C. §§ 542 or 543 by the Debtor In Possession or any sale under 11 U.S.C. § 363;

9. To hear and determine any adversary proceeding brought under 11 U.S.C. §§ 547 or 548 by the Creditor's Committee as authorized by this Plan;

10. To make the allowance of fees to all professionals for services in this case in accordance with the Bankruptcy Code including Post-Confirmation administrative claims;

11. Entry of an Order concluding and terminating this case;

12. The retention of such jurisdiction as is necessary to implement, maintain and preserve the Post-Confirmation Arrangement including those powers to be exercised by the Debtor in Possession.

DATED: June 10, 1985

POWERINE OIL COMPANY
Debtor and Debtor In Possession

By: GENDEL, RASKOFF, SHAPIRO & QUITTNER, Attorneys for Debtor and Debtor In Possession

By: HERBERT KATZ

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
215 Fremont Street
San Francisco, Ca. 94105

APR 14 1989

Certified Mail No. P 000 583 356
Return Receipt Requested

Matthew P. Stewart, President
Powerine Oil Company, Inc.
13384 East Lakeland Drive
Santa Fe Springs, CA 90670

Re: Operating Industries, Inc.
Monterey Park, California

Dear Mr. Stewart:

EPA has received the September 22, 1988 response to the June 30, 1988 Notice Letter/Request for Information regarding Operating Industries Inc. (OII), of Monterey Park, California, that Herbert Katz prepared on behalf of Powerine. We appreciate the information provided thus far. However, our review of the response has identified a few areas in which we need further information.

Therefore, the Environmental Protection Agency hereby requests that you provide the following specific information, pursuant to the statutory provisions of Section 3007(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6927(a), and Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §9604(e), as amended by the Superfund Amendments and Reauthorization Act (SARA).

I would also like to respond to some of the issues regarding bankruptcy which Mr. Katz raised in the Powerine response. This is also in response to Thomas R. Broussard's March 15, 1988 letter, in which he raised some of the same issues regarding Powerine's status as a potentially responsible party at OII. Mr. Katz noted that Powerine filed a Chapter 11 petition under the bankruptcy laws of the United States on March 26, 1984. Moreover, he indicated that the Bankruptcy Court had entered its Order Confirming Powerine's Plan of Reorganization, and that under that Plan, all pre-petition claims against Powerine had been discharged. He asserted that, because the last record of disposal by Powerine of waste material at the Monterey Park facility was prior to the date on which Powerine filed bankruptcy,

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any claim arising from this activity would be a pre-petition claim pursuant to 11 U.S.C. §101(4) and (5). He therefore asserted that all claims regarding the Operating Industries, Inc. site were discharged by the Order of Confirmation issued by the Court. However, as I am sure you are aware, this site was still in operation until December, 1984, and EPA did not expend funds at this site until some time thereafter. In fact, EPA did not incur costs at the site until after Powerine's discharge in bankruptcy. An action for costs under CERCLA does not arise until costs have been incurred. Thus, EPA did not have a claim subject to discharge in the bankruptcy, and the costs that EPA has incurred are recoverable against the reorganized Powerine.

Mr. Katz also raised an issue regarding the "involvement" of the United States in Powerine's plan of reorganization. He noted that the Plan, the Disclosure Statement describing the Plan, and Notices of Hearing were served on creditors and claimants pursuant to 11 U.S.C. §1125 and Bankruptcy Rule 3002(b). He also noted that Michael Green of the United States Department of Justice appeared at the hearing on the approval of the Plan on behalf of the Environmental Protection Agency, and withdrew proofs of claim filed on its behalf by Montrose Corporation of California and Alumax, Inc. relating to the litigation regarding the Stringfellow Acid Pits site in Riverside, California. I would just like to clarify that Mr. Green appeared on behalf of the United States regarding the Stringfellow site alone. As you know, his appearance in no way represented the United States with regards to the Operating Industries, Inc. landfill, nor was the United States scheduled as a creditor or given notice with regard to any potential liability of Powerine at the OII site. Moreover, as stated above, since there were no costs and thus, no claim at the time of that hearing. Mr. Green's appearance could not have been for the OII site.

Mr. Katz also raised the issue of the bar date, which was fixed by the Bankruptcy Court as March 1, 1985. As discussed above, EPA's claim arose after the bankruptcy. Since EPA did not have a claim subject to discharge, our cause of action against Powerine was clearly not affected by the bar date.

Therefore, EPA would like to make it clear that the financial obligations regarding Powerine's disposal of materials at the Operating Industries, Inc. landfill have not been discharged.

Finally, Mr. Katz raised various issues regarding whether or not EPA is entitled to request the information which was requested in our original request for information. It should be noted that the right to request information under §104(e) of CERCLA is very broad, and more importantly, is an administrative authority to collect information which is separate and distinct from the discovery process, and is not governed by the rules regarding discovery that Mr. Katz referred to in his

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letter. Moreover, since the time of our first request, the Superfund Amendments and Reauthorization Act (SARA) expanded and clarified our authority to request information. Among other things, the amendments to this provision allow EPA to require "any person who has or may have information relevant . . , to furnish . . . information or documents." It should be noted that our authority to request the provision of information is also separate and distinct from any question regarding the issue of liability at a site. Moreover, the same provision cited above specifically authorizes EPA to request "information relating to the ability of a person to pay for or perform a cleanup."

We urge Powerine to cooperate with the EPA in both the provision of information, and in investigating and cleaning up the site, in as expeditious a manner as possible to minimize costs for all persons concerned.

Therefore, we would appreciate an update of your response to questions 1 and 2 from our original request for information, with particular regard to the finances of the reorganized company. Please provide:

1. A list, by insurer and policy number, identifying all comprehensive general liability and environmental impairment insurance in effect during the time Powerine Oil Company, Inc., disposed of wastes at the OII landfill covering personal injury and property damage to third parties, both for sudden and non-sudden accidental occurrences. In addition, please specify the policy limits and expiration date for each policy.

2. Provide an audited set of financial statements which includes a Statement of Financial Position/Balance Sheet, Income Statement, and Statement of Changes in Working, and any other supplementary information for your company's most recent fiscal year.

As noted above, we have reviewed the response provided to our first request for information. We appreciate the cooperation of Powerine in responding to these questions. However, we have identified a few areas in which we need further clarification and information.

As requested in our letter of June 20, 1988, please provide all information and documents pertaining to OII. Please include any information which you have not already provided us in your previous response, or which has been located or come to your attention since you prepared the response to our original request. Moreover, please specifically provide responses to the following requests:

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3. Please provide each of the following documents, which were referred to in your September 22, 1986 response but which were omitted from the mailing received by the EPA:

   (a) "Sheet I," description of drilling mud waste, referred to in Exhibit B of your September 22, 1986 response, p. 1, §3(a);

   (b) "Sheet II", analysis of produced water, referred to in Exhibit B, p. 2, line 4;

   (c) Waste disposal summary, referred to in Exhibit B, p. 3, §3(g);

   (d) "Sheet III", MSDS for Chevron 350-B solvent, referred to in Exhibit B, p. 3, §6.

4. Please describe in detail the procedures involved in the treatment of "sour water" as this term is used by your company, including a chemical analysis of the "sour water" prior to treatment, names of all chemicals and other substances introduced during treatment, and the type and chemical composition of wastes produced by the "sour water" treatment process as a whole.

5. Several manifests dated February to March, 1977, indicate "toxic" contents. Please note in particular manifest #04883, dated 3-25-77, marked "Tk. 19/tank cleaning." Please describe the contents of this tank on or about the dates indicated, with particular attention to any toxic constituents. Please describe the process or processes which generated the materials in this tank. In addition, please indicate whether the other wastes removed about this same time and similarly described on the manifests were, in fact, identical or similar to the "Tk. 19" contents.

6. Did Powerine use a dissolved air flotation unit at its Santa Fe Springs facility during the periods it disposed of wastes at OII? If so, please identify the wastes the process generated, and indicate where they were disposed.

7. Please identify who selected the OII landfill as the disposal site for the wastes your company generated (i.e., your employee, the transporter, or any other party). Please also outline Powerine's policies and procedures for selecting a disposal site.

8. Please provide an update on the Chapter 11 Petition filed by Powerine Oil Company under the Bankruptcy laws, and indicate whether there have been any modifications to the Third Amended Plan as confirmed on July 10, 1985. Please include a copy of the Disclosure Statement which described the Third Amended Plan, and include copies of any subsequent Plans and Orders confirming those Plans.

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9. Please provide a list of those persons who were interviewed and provided the information to prepare both this response, and Powerine's September 22, 1986 response to the initial EPA Request for Information regarding OII. Please include the employee's name and current job title, as well as his/her job title and duties when employed by Powerine Oil Company or its agents at the sites in question.

10. In addition to those persons noted in your response to to the previous question, please identify all present and former employees with specific knowledge of Powerine process operations, chemical usage, wastestream constituent content, and treatment/disposal practices. For each identified employee please provide: name, current address and telephone number; dates of employment, and current and former job titles.

For your information, this information request refers to matter in any state (e.g., solid, liquid, or gaseous, or any combination thereof) and includes each substance, element, compound, mixture, or solution comprising a substance. A substance includes, but is not limited to, hazardous wastes and hazardous substances, as defined under §1004(5) of RCRA and §101(14) of CERCLA, respectively. The words "hazardous substances," "hazardous waste," and "person" are defined at 42 U.S.C. §6903(5), 42 U.S.C. §6903(5), and 42 U.S.C. §6903(15).

Please note that for the purposes of these questions, the chemical analysis as requested should include the specific chemical names of each substance involved. The term "specific chemical name" means a descriptive term which defines a compound, and typifies that compound as one unique from all others (e.g., "n-octane" as opposed to "long chain aliphatic hydrocarbon"). The term "manufacturing process" means a specific manufacturing activity, as opposed to a general description of the result of all activities carried out in a given facility (e.g., "vacuum distillation of asphalt residues" as opposed to "petroleum refining").

The scope of this request extends to all information and documents developed or obtained by your company, its employees, agents, consultants, or attorneys and any of the attorney's agents, consultants, or employees. The word "documents" means any written, recorded or visually or aurally reproduced material of any kind; it includes originals, all prior drafts, and all non-identical copies.

You should, in response to these questions, submit all relevant information and documents pertaining to any National Pollutant Discharge Elimination System ("NPDES") permits your company holds.

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Federal law requires you to provide the requested information to the EPA. Section 104(e) of CERCLA provides that the EPA may require "...any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

(C) Information relating to the ability of a person to pay for or perform a cleanup...."

In addition, Section 3007(a) of RCRA provides that "...any person who generates, stores, treats, transports, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the U. S. Environmental Protection Agency...furnish information relating to such wastes..."

Failure to comply with this request may subject you and your company to compliance orders, civil actions, and penalties.

You may assert a business confidentiality claim covering all or part of the information requested in this letter, as provided at 40 C.F.R. Section 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent and by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. EPA will construe the failure to furnish a confidentiality claim with your response to this letter as a waiver of that claim, and information may be made available to the public without further notice to you.

Your response, in writing by certified mail, to this request for information must be signed by yourself or another duly authorized official of your Company and submitted to the following office within thirty (30) days of receipt of this letter. Your response should be directed to:

Lisa Anne Haage
Assistant Regional Counsel
U. S. Environmental Protection Agency
Region IX
215 Fremont Street
San Francisco, California 94105

Please include in your response to this request a Notarized affidavit from a responsible company official stating: 1) that a diligent records search has been completed; 2) that there has

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been a diligent interviewing process with present and former employees who may have knowledge of operation, chemical use, and waste disposal practices; and 3) a statement that all information responsive to EPA's request in this letter has been sent to the Agency.

For your convenience, EPA has established a telephone line to provide general information regarding the ORI site and this request. For general information, please call the Office of Regional Counsel at (415) 974-8732. If you need to speak to me directly, I can be contacted at (415) 974-8041. Your cooperation in this matter is appreciated.

Sincerely,

Lisa Anne Hanf
Assistant Regional Counsel

cc: Thomas N. Braunsard, Esq.
Herbert Katz, Esq.
Michele Berner
File

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE

RE: CONTINUANCES:

No continuances will be granted unless a written stipulation signed by all parties is filed at least 48 hours prior to the scheduled hearing. Such stipulation must explain, in detail, the reason for the continuance. Such stipulation must be in the form of a declaration, signed under penalty of perjury. No continuance will be granted without good cause.

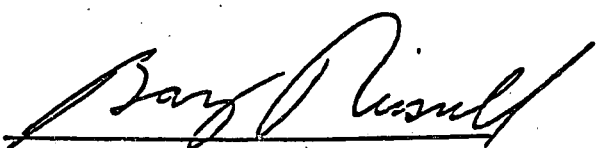
In addition to filing a written stipulation, the Courtroom Deputy must be notified personally at least 48 hours before the hearing. No continuances will be granted on the day of the hearing. It is the responsibility of all parties to check to see that the Court has been so notified. If there has been no notification, both written and oral, all sides must be ready to proceed with the hearing. Unless the parties have been notified by the clerk that the Judge has granted the motion, all parties must appear for the hearing.

RE: SETTLEMENTS:

In case of a settlement reached prior to a hearing or trial, every effort should be made to notify the Court at least 48 hours prior to the hearing or trial.

RE: SANCTIONS FOR FAILURE TO TIMELY PREPARE FOR STATUS AND PRETRIAL CONFERENCES:

Pursuant to Rule 7016 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 7016-1, failure to timely comply with Rule 7016-1 will result in sanctions of at least $200.00 against any party and/or its counsel, payable to the Clerk of Court, General Fund Account. Additional sanctions may be imposed as deemed appropriate under the circumstances. Timely compliance with Rule 7016-1 includes, but is not limited to, timely filing of status reports and pretrial orders. Subsequent offenses in the same matter will result in escalating sanctions. Sending attorneys to court to appear on matters, about which they are inadequate informed will result in similar sanctions.



BARRY RUSSELL
U.S. Bankruptcy Judge

In re POWERINE OIL COMPANY, a California corporation Debtor.	CHAPTER 11 CASE NUMBER LA 84-07086 BR

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF San Francisco

1. I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is as follows:

Pillsbury Winthrop LLP
50 Fremont Street
San Francisco, CA 94105

2. ☒ **Regular Mail Service:** On October 16, 2001, I served the foregoing Summons and Notice of Status Conference (and any instructions attached thereto), together with the Complaint filed in this proceeding, on the Defendant(s) at the following address(es) by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail at San Francisco, California, addressed as set forth below.

3. ☐ **Personal Service:** On _____, personal service of the foregoing Summons and Notice of Status Conference (and any instructions attached thereto), together with the Complaint filed in this proceeding, was made on the Defendant(s) at the address(es) set forth below.

4. Defendant(s) and address(es) upon which service was made:

SEE ATTACHED SERVICE LIST.

☐ Names and Addresses continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: October 16, 2001

Linda M. Lim
Type Name

_____
Signature

SERVICE LIST

Powerine Oil Company, et al. v. Christine Todd Whitman, et al.

Chapter 11, Case No. LA 84-07086 BR

Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Attorney General John Ashcroft
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Wayne Nastri
Regional Administrator
US EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

United States Trustee
221 N. Figueroa Street
Suite 800
Los Angeles, CA 90012-2650

Civil Docket Clerk
The United States Attorney's Office
Central District of California
Civil Division
300 North Los Angeles Street
7th Floor
Los Angeles, CA 90012